IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 2921 OF 2007
IN
CRIMINAL APPEAL NO. OF 2007

The State of Maharashtra ..Applicant

versus

Appasao K. Fulari & Anr. ..Respondents

Mr. A. S. Shitole, APP for the Applicant - State.

CORAM : B. H. MARLAPALLE, J.

DATE : 7TH SEPTEMBER, 2007.

P.C.

. Heard Mr. Shitole, learned APP for the Applicant - State/

2. This is an application seeking leave to Appeal under Section 378(3) of the Cr.P.C. against the order passed by the learned Adhoc DJ-3 & Additional Sessions Judge, Sangli, on 10.5.2007 in Special Case No.1 of 2007. The respondent - accused was tried for the offences punishable under Section 3(1)(x) and Section 6 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act,

1989, as well as Section 10 of Protection of Civil Rights Act, 1955 and under Section 506 read with Section 34 of the Indian Penal Code.

3. As per the prosecution, the Complainant Pramod Khandare who belongs to Dhor Caste, which is listed as Scheduled Tribe with the State of Maharashtra filed a complaint that he was threatened by accused Ganesh Fulari in uttering the following words :

"Dhora, Tuzi Tangadi Modto" and

. "Manga, Maharachya, Lavdyachya Tula Baghtoch"

It was also claimed that the incident was witnessed by Shri Ismile Patel and Shri Jahangir Khudabaksh Patel, who intervened and rescued. The quarrel and the incident is claimed to have taken place in the court premises. Consequently, complaint came to be lodged with the police on 14.10.2006.

4. P.W. 4 Kalekar, PSI, investigated the matter and subsequently handed over the

investigation to P.W. 5 Pradhan, Dy. S.P. After five witnesses were examined, the statement of the accused under Section 313 of the Cr.P.C. was also recorded and caste certificate of the complainant was brought on record at Exhibit 6; whereas the School Leaving Certificates of the accused Appasaheb Fulari and Ganesh Fulari were also brought on record at Exhibits 8 and 9 respectively.

5. The trial court on perusal of the testimony of P.W. 1 - the complainant and his report to the police at Exhibit 13 dated 14.10.2006 noted that neither the caste of the complainant nor the caste of the accused was mentioned. P.W. 2 Altaf Patel stated in his deposition before the court that the incident of giving abuses by the accused to the complainant had occurred on the staircase, whereas the complainant stated in his deposition that the said incident had occurred in the open court premises. The incident was claimed to have taken place on 4.8.2006; whereas the statement of P.W. 2 was recorded on 28.9.2006 and the offence was registered on 14.10.2006. P.W. 3 Jahangir Patel deposed that on 4.8.2006 he had come to the first floor of the court building to meet his Advocate and

while climbing the staircase, he noticed that Pramod Khandare and Appasaheb Fulari as well as Ganesh Fulari were quarreling with each other and Appasaheb Fulari had caught hold of the collar of Pramod and pushed him from the staircase. He also reported that the accused had abused the complainant with the language stated in the complaint. However, in the cross-examination he admitted that prior to the incident of quarrel he was not knowing Altaf Mushrif and the police had recorded his statement for the first time on 30.9.2006. It was not clear before the trial court whether the said statement was recorded by the Police Inspector or the Officer of the rank of Police Inspector or Officer of the rank of Dy. S.P. In fact, the witness stated that Constable Kolekar reduced his statement in writing. P.W. 5 Digambar Pradhan stated before the court that on 15.11.2006 he had obtained the caste certificate of the accused and then arrested the accused. He admitted that in the report at Exhibit 13 there was no reference about the caste of the complainant and the caste of the accused. The legal effect of this admission was that the complaint could not have been registered. As noted earlier, the incident was claimed to have taken place on

4.8.2006, complaint was filed for the first time on 14.10.2006. Trial court did not find the prosecution evidence reliable so as to hold the accused guilty of the offences under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The reasonings set out by the trial court in support of the acquittal, therefore does not call for any reconsideration at the hands of this court.

6. Hence, leave to file Appeal is refused.

(B. H. MARLAPALLE, J.)